IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5962 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

NAGJIBHAI R BORICHA

Appearance:

1. Special Civil Application No. 5962 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/12/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-Corporation has challenged the award passed by the Labour Court, Bhavnagar dated 15-5-1991 passed in

Reference (LCB) No.168/1989. By the impugned award, the Labour Court has passed an order of reinstatement of the workman with 25% backwages.

2) The respondent-workman herein was appointed as a Conductor in the S.T.Corporation. He was on duty as a "conductor" in the bus, which was plying between Palitana and Mandavi. At the time of checking, it was found that the respondent collected fare from certain passengers but had not issued tickets in their favour. It was alleged that he had shown dereliction of duty by not issuing tickets in favour of the passengers after collecting fare and a regular inquiry was initiated against him. It is the case of the S.T.Corporation that the statements of the passengers were recorded in the presence of the workman and the workman had also signed below such statement. Before the Inquiry Officer, a reporter was also examined and he was also cross-examined by the respondent-workman before completion of inquiry. The Inquiry Officer found the workman guilty of the charges levelled against him. Ultimately, on the basis of the same, order of dismissal was passed against the workman. An appeal was preferred by the respondent-workman but the same was rejected and ultimately, the respondent-workman raised an industrial dispute, which was referred to the Labour Court, Bhavnagar. The Labour Court allowed the said reference by ordering reinstatement, with 25% backwages. The said award is impugned at the instance of S.T.Corporation in this petition.

3) This Court, while admitting this petition on 12-2-1993, has not granted any interim relief so far as it relates to reinstatement, but stayed the order of backwages.

4) On behalf of the S.T.Corporation, it is argued by Mr.Raval that the Labour Court has committed an error of law, in allowing the reference, by coming to the conclusion that the principles of natural justice have been violated during the inquiry proceedings.

5) The Labour Court has found in para 5 of the award that the charge levelled against the petitioner is not proved beyond reasonable doubt. The labour Court found that only on the basis of evidence of the reporter, it cannot be said that the petitioner was guilty of misconduct, as the reporter is an "interested witness". The Labour Court also found that the independent witnesses, i.e. the passengers, are not examined and under such circumstances, the Labour Court found that the inquiry was not held in accordance with the principles of

natural justice and, ultimately, the order of removal was set aside. The Labour Court has observed that in the past, the respondent-workman was subjected to 30 misconducts and he was punished appropriately.

6) Mr.Rathod, on the other hand, submitted that since the Labour Court has found that the inquiry is not held in accordance with the principles of natural justice, the order passed by the Labour Court is not required to be interfered with in exercise of the extraordinary jurisdiction under Article 227 of the Constitution of India, wherein the powers of this Court are limited.

7) I have heard both the sides and considered the reasoning of the Labour Court. In my view, the order of the Labour Court is unsustainable. Only on the basis of surmises and conjectures, the Labour Court has come to the conclusion that the inquiry is vitiated. It is required to be noted that the statement of the passengers were recorded by the department in the presence of the respondent-workman and not only that, he was allowed to cross-examine the reporter, who was examined by the S.T.Corporation. It is not in dispute that the workman had not issued tickets even though he had collected fare. The defence of the workman is that he was in the process of issuing tickets. However, simply on such defence, it cannot be presumed that the concerned workman had not committed any misconduct, and especially in view of the evidence of the reporter, the Corporation has found that the concerned workman has committed misconduct of not issuing tickets to the passengers. In support of his submissions, Mr.Raval has relied upon the decision of the Apex Court rendered in the case of State of Haryana & Anr. Vs. Rattan Singh reported in AIR 1977 SC page 1512, wherein the Apex Court has observed in para 5 and 6 as under :

"5. Reliance was placed, as earlier stated, on the noncompliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were

not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal.

6. No actual punishment in the sense of dismissal or removal was inflicted and counsel for the State read out the order finally passed. The read out order merely states that the services were terminated and the State's Counsel agrees that there was no dismissal or removal or punitive punishment as seen from the order. All that we guess is, taking the words used in the order, the authorities probably had regard to the overall circumstances including the long years of service (10 years) and the comparatively young age of the delinquent at the time of termination of service (26) and relented in the matter of final termination by simply telling him off from service without inflicting any of the punishments. This lies within the power of the employer and it is not for us to say that the State should have punished him in a particular manner. Therefore, while confirming the order passed by the State and setting aside the decree of the courts below, we hold that the consequences of a simple termination must follow. We, therefore, direct, while allowing the appeal, that the State shall pay the respondent all that is due to him under the industrial law as an employee when his services are terminated without penal consequences - apart from the salary for the period he has worked after the recent reinstatements. Counsel for the appellants has agreed that this direction will be carried out as the State is bound to. With these observations, we allow the appeal but the parties will bear their costs throughout.

Appeal allowed."

8) It is required to be noted that, in the departmental inquiry, if some evidence is available, it is enough for the purpose of establishing the guilt against the delinquent. Apart from the aforesaid fact, in this case, there is an evidence on record and inquiry cannot be said to be vitiated in any manner. It is not

mandatory that the passengers are required to be examined and it is, no doubt, true that the workman had not issued tickets even though he had collected fare, and his defence is also not believable and, therefore, in my view, the Labour Court has committed a serious error of law in setting aside the order passed after inquiry, by coming to the conclusion that the inquiry is vitiated, by merely making some observations in the order. In that view of the matter, order of the Labour Court is required to be quashed and set aside and it is accordingly set aside. However, Mr.Rathod submitted that the petitioner is already reinstated in service since 1992 and by this time 13 years have passed and, therefore, the Court may consider the question about appropriate punishment under Section 11-A of the Industrial Disputes Act. Mr.Raval has left this question to this Court. As, ultimately, by this time, about more than 13 years have passed, and since the petitioner is working with the Corporation, and considering the said aspect of the matter, the order of reinstatement passed by the Labour Court is not disturbed. However, the concerned workman shall be subjected to a penalty of withholding one increment with future effect. The order for backwages is also set aside and the workman shall not be entitled to any backwages for the intervening period.

7) The order of the Labour Court is accordingly modified. Petition is accordingly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)
/malek